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February 19, 1999

Mr. Gary E. Walsh, Executive Director
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, South Carolina 29210

Re: Generic Proceeding to Review Voice over the Internet
Docket No. 98-651-C

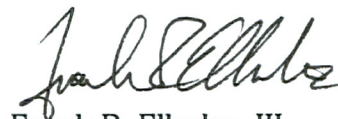
Dear Mr. Walsh:

Enclosed for filing please find the **Motion to Forebear** From Decision Or For Scheduling Order of the Southeastern Competitive Carriers Association in the generic proceeding to review issues concerning Voice over the Internet. By copy of this letter we are serving the same on all interested parties.

Please stamp the extra copies provided and return them with our courier.

Yours truly,

ROBINSON, McFADDEN & MOORE, P.C.



Frank R. Ellerbe, III

FRE/nps
enclosures

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ACCEPTED
Legal 20B-2294

POSTED
2/22/99

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

S. C. PUBLIC SERVICE COMMISSION
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DOCKET NO. 98-651-C

In re:)
Proceedings to Review Voice)
Over the Internet)
(IP Telephony))
MOTION TO FOREBEAR
FROM DECISION OR
FOR SCHEDULING ORDER

S. C. PUBLIC SERVICE COMMISSION
RECEIVED
FEB 22 1999
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UTILITIES DEPARTMENT

I. Introduction

The Southeastern Competitive Carriers Association ("SECCA")¹ respectfully submits this Motion requesting that the South Carolina Public Service Commission ("Commission") forebear from any policy decision concerning appropriate compensation for the use of local networks by Internet Protocol ("IP") telephony, until the Federal Communications Commission ("FCC") has made a determination regarding the issue or until it is clear that the technology and use of IP telephony have developed to the point where sufficient information exists for a policy decision to be made by the Commission consistently with national Internet policy.

In the alternative, SECCA requests that the hearing be postponed until a Scheduling Order can be issued by the Commission. The Order would include an opportunity for interested parties to brief the issue whether and to what extent it is necessary for the Commission to engage in further proceedings concerning appropriate charges to be assessed on providers and, therefore, the users of IP telephony. If the Commission finds that further inquiry is necessary, parties would

¹ SECCA's members include: Business Telecom, Inc., Time Warner Communications, ICG Telecom Group, Inc., e.spire Communications, Inc. State Communications, AT&T Communications of the Southern States, Inc., AT&T Communications of the South Central States, Inc., the Competitive Telecommunications Association, ITC^ DeltaCom, Inc., Qwest Communications, NEXTLINK, LLC, the Telecommunications Resellers Association, and MCI Telecommunications Corporation and WorldCom Technologies, Inc. (MCI WorldCom, Inc.).

RETURN DATE: _____
SERVICE: ok

participate in a preliminary conference, supervised by Commission Staff, to discuss and determine relevant issues concerning IP telephony, and then would engage in workshops, also supervised by Staff, at which subject matter experts would participate, to discuss those issues and determine what issues may be resolved. Following the workshops, if it is deemed necessary to engage in further proceedings, the parties would have an opportunity to submit testimony and post-hearing comments, in addition to participating in a hearing. The Commission would then issue a ruling.²

II. Regulation of IP Telephony By the States is Premature

The analog-based, circuit-switched telephone industry has had a long history of governmental regulation. The industry has been regulated by both federal and state authorities so as to ensure that basic telephone services are affordable for residential consumers. In addition, direct subsidies are provided for services made available to the hearing disadvantaged, libraries, emergency services, the economically disadvantaged, elementary and secondary schools and rural healthcare, as well as to provide a certain level and quality of service at prices that traditionally have been scrutinized as to whether they are just and reasonable.

In the last several decades, there has been a technological “convergence” involving the “digitalizing” of communications, the advent of ubiquitous, high-speed electronic computers, and the development of “broadband” transmission capabilities (for voice, video and data) and, in particular, the Internet. The exponential rate of technological change and the consequent scope of social and cultural change have been as breathtaking as they have been revolutionary. The speed of these advances in technology has been made possible by the introduction of competition in

² SECCA and its members take no position, with respect to this Motion, concerning the substantive issue whether access charges are appropriate with regard to IP telephony, or with regard to other substantive policy issues, such as whether Internet traffic is “local” or “interstate” in nature or whether IP telephony is a “telecommunications service” or an “information service.”

telecommunications. Telecommunications growth and consumer choice in telecommunications products, in turn, have been major contributors to the growth and strength of the American economy.

Accordingly, Congress, the FCC and other governmental agencies charged with policymaking and regulatory oversight of the telephone industry have been reluctant to foist the full panoply of common carrier regulation of telecommunications onto the new forms of electronic commerce. Government is understandably loath to intervene in the competitive marketplace with traditional forms of regulation.

The strong inclination of government to not intervene in the emerging electronic marketplace, particularly with respect to the Internet, is based on several sound, guiding principles:

- The private sector should lead the development of the Internet as a free and open marketplace, not a regulated industry;
- Governments should proceed cautiously and avoid undue restrictions on electronic commerce, and should refrain from imposing unnecessary regulations and bureaucratic procedures on nascent activities that take place via the Internet; and
- Electronic commerce over the Internet should be facilitated on a national and, indeed, global basis, so that, to the greatest extent possible, the legal commercial framework for transactions is consistent, minimalist and predictable regardless of traditional jurisdictional boundaries.³

³ A Framework for Global Electronic Commerce, released July 1, 1997 by the White House, <http://www.whitehouse.gov/WH/New/Commerce/read.html>.

The efforts by government to avoid burdening the Internet with regulation should be regarded as a major success. The Internet has been able to grow rapidly because of, not in spite of, the absence of common carrier regulation.⁴ Indeed, Congress in the Telecommunications Act of 1996 recognized that it is the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation”.⁵ As the FCC has also observed:

This policy of distinguishing competitive technologies from regulated services not yet subject to full competition remains viable . . . As an empirical matter, the level of competition, innovation, investment, and growth in the enhanced services industry over the past two decades provides a strong endorsement for such an approach.⁶

The Internet is an international network of computers, “backbone” routers, modems and other equipment, and end users (Internet Service Providers, or “ISPs”), interconnected by transmission facilities, to enable millions of people to access vast amounts of information from around the world.⁷ Information is split into small “chunks” or packets of data, which are individually routed, using protocols that are unique to the Internet, through the most efficient path to their destinations. There are many providers of Internet backbone services, and even more ISPs.

In short, the Internet is a unique, fluid, complex entity that is fundamentally different from other communications technologies. Because the Internet represents a burgeoning, revolutionary

⁴ “Digital Tornado: The Internet and Telecommunications Policy” (“Digital Tornado”), March 1997, FCC Office of Plans and Policy, Section A of Executive Summary.

⁵ 47 U.S.C. 230(b)(2).

⁶ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, released April 10, 1998 (“Report to Congress”), paragraph 95.

⁷ In the Matter of GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, Memorandum Opinion and Orders, released October 30, 1998, paragraph 6. See also Digital Tornado, Section II.

interconnected network, no one entity can control or speak for the entire system.⁸ As the FCC has observed:

The chaotic nature of the Internet may be troubling for governments, which tend to value stability and certainty. However ... (t)he Internet creates new forms of competition, valuable services for end users, and benefits to the economy. Government policy approaches toward the Internet should therefore start from two basic principles: avoid unnecessary regulation, and question the applicability of traditional rules.⁹

Most recently, some ISPs have begun using Internet protocol to enable real-time voice transmission, known as "IP telephony." These services can be provided in two (2) ways: through software and hardware installed at customer premises, or through "gateways" that enable applications originating and/or terminating on the public switched telephone network ("PSTN").¹⁰

Most IP telephony services are computer-to-computer.¹¹ Gateways, however, allow users the ability to call from their computers to ordinary telephones connected to the PSTN, or from one telephone to another. Voice communications can be transmitted along with other data on the "public" Internet, or they can be routed through intranets or other private data networks for improved performance.¹² Gateway providers must pay for hardware at points of presence to route voice traffic between the Internet and the voice network, and must also pay local exchange carriers ("LECs") to terminate or originate traffic. Thus gateway providers have incentives to charge per-minute rates for their Internet telephony services, rather than the "free" calling available through current computer-to-computer products.

⁸ Id., Executive Summary, Section A.

⁹ Id.

¹⁰ Report to Congress, paragraph 84. "Gateways" are computers that transform the circuit-switched voice signal into "packets," and vice versa, and perform associated signaling, control, and address translation functions. Id.

¹¹ Digital Tornado, Section III.B.2.c.

¹² Id.

Even computer-to-computer products, however, do not really provide for “free” calling. Service providers and users still must pay for their connections to the local phone network, and for their connections to the Internet.¹³ As the FCC has determined:

If these services are priced in an inefficient manner, the issue is not one related to Internet telephony, but is a broader question about the pricing for Internet access and enhanced services that use local exchange networks . . . The issue of how exactly Internet telephony affects network usage, and how pricing affects usage of Internet telephony, is not at all settled . . . If circuit-switched long-distance carriers are paying excessive and inefficient rates as a result, the best answer is to reform those rates rather than attempting to impose them on other parties (emphasis added).¹⁴

IP telephony is nascent and represents a very small piece of the communications market at present. In 1997 it was estimated that a mere 55,000 to 60,000 people globally use IP telephony products on a weekly basis.¹⁵ How many, if any, South Carolinians are presently using IP telephony, and under what circumstances, is a matter of speculation. Moreover, issues relating to voice over the Internet are not unique to South Carolina. In spite of the national and, indeed, international interest in IP telephony, however, neither BellSouth Telecommunications, Inc. nor any other state public utility commission in the Southeast has caused any other inquiry into IP telephony to be initiated. Even assuming that Internet growth in general is increasing exponentially, neither Congress nor the FCC has found cause to make any final determinations regarding the regulation of IP telephony.

Moreover, even if one wished to impose above-cost access charges on IP telephony there is at present no way to identify or distinguish IP telephony from other Internet usage. Thus there

¹³ Id.

¹⁴ Id.

¹⁵ Id. The context of the cited material indicates that the numbers of people mentioned are located worldwide.

is no method currently to identify minutes of usage for the purpose of imposing access charges. "Marking" or otherwise identifying such traffic, if and when technically feasible, as well as determining the jurisdictional nature of such traffic, also implicates contentious issues besides access charges; for example, universal service and the extent to which Regional Bell Operating Companies ("RBOCs") and their ISP affiliates are engaged in interLATA telecommunications services.¹⁶

Under these circumstances, state regulation of IP telephony, however well intentioned it may be, is premature and ill-advised. As FCC staff has observed:

If federal rules governing Internet telephony are problematic, state regulations seem even harder to justify...The possibility that fifty separate state Commissions could choose to regulate providers of Internet telephony services within their state (sic) (however that would be defined), already may be exerting a chilling influence on the Internet telephony market."¹⁷

Accordingly, it would be prudent to wait and participate in debate before a national policymaking forum rather than to engage in separate rulemaking activities.

III. A Consistent, National Policy Regarding IP Telephony Requires the FCC to Determine What are "Telecommunications Services" Over the Internet Subject to Regulation

The FCC has been engaged in rulemaking activities for the last thirty (30) years in an effort to determine to what extent traditional regulation of the emerging technologies is necessary or appropriate for emerging technologies. These activities, although in the main affecting Internet usage and policy generally rather than IP telephony specifically, indicate the FCC's intent and the

¹⁶ InterLATA telecommunications services, inter alia, would implicate Section 271 of the Telecommunications Act of 1996.

¹⁷ Digital Tornado, Section III.B.2.c.

need to develop a national and uniform policy with regard to new forms of delivery of “telecommunications services,” as well as “related” services.

In Computer I,¹⁸ the initiation of which for all practical purposes predated the Internet, the FCC first drew a distinction between unregulated and regulated forms of telecommunications-based services. “Regulated” services were described as communications services and “hybrid” communications; i.e., those in which the communications “component” predominates and the data processing component is regarded as “incidental.” “Unregulated” services were described as data processing and those hybrid-data processing services in which the data processing component predominates and the communications component is found to be incidental.

In Computer II,¹⁹ the FCC took a step back and concluded that “communications” and “data processing” were so interrelated that there could not be an “enduring line of demarcation” drawn between the two. The FCC instead decided to describe services as either “basic” or “enhanced,” notwithstanding that the latter rely on the use of transmission services. A “basic” service was defined as a “pure transmission capability over a communications path that it virtually transparent in terms of its interaction with customer supplied information.”²⁰ “Enhanced” services, on the other hand, “combine basic service with computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber’s transmitted information, or provide the

¹⁸ First Computer Inquiry, 28 F.C.C.2d (1970), *aff’d sub nom. GTE Services Corp. v. FCC*, 474 F.2d 724 (2d Cir. 1973). This inquiry was initiated in 1970.

¹⁹ Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384 (1980), *on recon.* 84 FCC2d 50 (1980), *on further recon.* 88 FCC2d 512 (1981), *aff’d sub nom. Computer & Communications Industry Ass’n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert den.*, 461 U.S. 938 (1983).

²⁰ Computer & Communications Industry Ass’n v. FCC, *supra*, 77 FCC2d at 419-20.

subscriber additional, different, or restructured information, or involve subscriber interaction with stored information.”²¹ The definition of “enhanced services” has been codified by FCC rule.²²

The significance of this distinction between services, of course, is that although “enhanced” services rely on the use of transmission services, they are unregulated. The clear policy reason for the distinction is so that the business of enhanced services (so long as not engaged in by RBOCs or, initially, AT&T),²³ could develop in the competitive marketplace, unhindered by regulatory strictures.²⁴

In the Modification of Final Judgment (“MFJ”),²⁵ the 1982 decision by which AT&T was divested of its local exchange business, RBOCs were prohibited from providing “information service.” The MFJ defined “information service” as the “offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications.”²⁶ Information services included data processing, electronic publishing, voice answering and electronic mail.²⁷

²¹ *Id.* at 387.

²² See 47 CFR section 64.702 (a).

²³ Structural separation rules required that these carriers provide enhanced service and CPE through separate subsidiaries, to prevent discrimination or cross-subsidization. Non-dominant carriers, including MCI, were not subject to the structural separations requirements, but were prohibited from discriminatory actions. Computer III, initiated in 1985, determined that the structural separation requirements imposed on the RBOCs would be removed, if the RBOCs could demonstrate that they complied with non-structural safeguards, one of which was “unbundling” of the individual components of the basic telephone network. The FCC promulgated two types of unbundling: Open Network Architecture (“ONA”) and comparably efficient interconnection (“CEI”). The Ninth Circuit, however, held that the removal of structural separation requirements was unlawfully arbitrary and capricious and that the FCC did not show that its preemption was necessary to avoid the frustration of federal policy. *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990). Although the FCC’s subsequent effort to preempt PSC action that impeded the Computer III order was affirmed by the Ninth Circuit, the appellate Court again reversed the attempt to relieve RBOCs from having to use separate subsidiaries, and remanded the proceeding to the FCC.

²⁴ See *Computer & Communications Industry Ass’n v. FCC*, *supra*, 77 FCC2d at 423.

²⁵ *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff’d mem. sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

²⁶ *Id.* at 229.

²⁷ Restrictions have been lifted, to allow RBOCs to provide only intraLATA information services.

The definition of “information service” from the MFJ is essentially codified in the Telecommunications Act of 1996,²⁸ which, while not mentioning “basic” or “enhanced” services, defines “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”²⁹ “Telecommunications” is the “transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”³⁰ The FCC has determined that all “enhanced services” are encompassed within “information services.”³¹

Since the interstate access charge system was established following the divestiture of AT&T, there has been discussion at the FCC concerning whether enhanced service providers (“ESPs”), including ISPs, should be required to pay access charges. The argument has been that they, like interexchange carriers (“IXCs”), use local networks to originate or terminate communications. In its 1983 Access Charge Reconsideration Order, the FCC decided that such providers should not be required to pay interstate access charges.³² As a result of that decision, ISPs have purchased services from LECs under the same intrastate tariffs available to other end users.³³

²⁸ 47 U.S.C. 153 (41).

²⁹ 47 U.S.C. 153 (51).

³⁰ 47 U.S.C. 153 (48).

³¹ In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, paragraph 102 (December 24, 1996). “Enhanced services” are “offered over common carrier transmission facilities used in interstate communications”. *Id.* at paragraph 103.

³² See Access Charge Reform, CC Docket 96-262, First Report and Order, FCC 97-158 (“Access Reform Order”), adopted May 7, 1997, released May 16, 1997 (“Access Charge Reform Order”), paragraph 341.

³³ *Id.* at paragraph 342.

Consequently, ISPs purchase local phone lines from LECs. These lines typically involve a flat monthly charge, as well as a per-minute charge for making outgoing calls. Because ISPs receive calls from their subscribers rather than making outgoing calls, ISPs generally do not pay any per-minute charges for their lines, which is one reason many ISPs do not charge per-minute rates for Internet access. Access charges, by contrast, include per-minute fees for both outgoing and incoming calls.

In 1997 the FCC concluded that ESPs and ISPs should not be required to pay interstate access charges, and that the “existing price structure for ISPs should remain in place”.³⁴ The FCC found that “(g)iven the evolution in ISP technologies and markets since we first established access charges in the early 1980s, it is not clear that ISPs use the public switched network in a manner analogous to IXC’s. Commercial Internet access, for example, did not even exist when access charges were established.”³⁵ The FCC was “not convinced that the nonassessment of access charges results in ISPs imposing uncompensated costs on incumbent LECs.”³⁶ At about the same time, the FCC declined to require contributions to the universal service support mechanisms by entities other than “telecommunications carriers.”³⁷

The FCC issued, however, a Notice of Inquiry (“NOI”) regarding the future of information service and Internet usage and its effect on LEC networks.³⁸ The comment period for the NOI is now closed. The FCC has stated that it plans to issue a Notice of Proposed Rulemaking (“NPRM”), asking for comment on more specific proposals based on

³⁴ Access Charge Reform Order, at paragraph 344.

³⁵ *Id.* at paragraph 345. “ISP” as used here means Information Service Providers, which term includes ESPs and ISPs.

³⁶ *Id.* at paragraph 346.

³⁷ Federal-State Joint Board on Universal Service, CC Docket 96-45, Report and Order, released May 8, 1997 (“Universal Service Order”).

³⁸ CC Docket 96-263.

the responses to the NOI. It is probable that the FCC will take up the issue of IP telephony; also, the NPRM will consider actions other than imposition of per-minute access charges on ISPs. As stated by the FCC: "We intend rather to focus on new approaches to encourage the efficient offering of services based on new network configurations and technologies, resulting in more innovative and dynamic services than exist today.... (W)e will address a range of fundamental issues about the Internet and other information services".³⁹ In this and in other contexts, moreover, the FCC has promised to continue to look into the nature and regulation of dial-up Internet traffic.⁴⁰

In the FCC's 1997 Report to Congress on Universal Service, the legal status of IP telephony was, for the first time, considered by the FCC. As noted by the FCC, industry observers are split in their recommendations as to the appropriate treatment of IP telephony services. The FCC concluded that companies that only provide software and hardware installed at customer premises do not fall within the category as providing a "telecommunications service."⁴¹ Without regard to whether "telecommunications" is taking place in the transmission of computer-to-computer IP telephony, ISPs do not appear to be providing telecommunications to their subscribers.⁴²

³⁹ Access Reform Order, at paragraph 348.

⁴⁰ Quite recently, the FCC, in determining that dedicated, special access for ADSL communications to ISPs is subject to federal jurisdiction, expressly avoided deciding the jurisdictional nature of dial-up calls from end users to ISPs, and hence to what extent such calls are "telecommunications." In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, Memorandum Opinion and Order, Released 10/30/98. The FCC has stated that it will rule on the latter issue. Also, pursuant to Section 706 of the Telecommunications Act, the FCC has initiated and must regularly initiate a notice of inquiry concerning the availability of advanced telecommunications capability. The FCC is vested with authority to remove barriers to infrastructure investment and by promoting competition in the telecommunications market. Under section 706 (b), "(a)dvanced telecommunications capability" is defined "without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." The FCC will be examining a broad range of issues as they affect switched telecommunications.

⁴¹ Report to Congress, paragraph 86.

⁴² *Id.* at paragraph 87.

Phone-to-phone IP telephony services,⁴³ however, which are deployed when an IP telephony service provider opens a gateway within the network to enable phone-to-phone service, create a virtual transmission path between points on the PSTN over a packet-switched IP network. These providers typically purchase circuits from carriers and use those circuits to originate or terminate Internet protocol-based calls without transiting the Internet. From a “functional” standpoint, according to the FCC, users of these services obtain only voice transmission, rather than information services. Hence the FCC concluded, tentatively, that this type of IP telephony bears certain characteristics of telecommunications services.⁴⁴

Although the record before the FCC suggests that certain ‘phone-to-phone IP telephony’ services lack the characteristics that would render them ‘information services’ within the meaning of the statute, and instead bear the characteristics of ‘telecommunications services’... (W)e do not believe, however, that it is appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings.⁴⁵

The FCC was not convinced it had adequately defined the technical and legal issues:

(W)e will need, before making definitive pronouncements, to consider whether our tentative definition of phone-to-phone IP telephony accurately

⁴³ Phone-to-phone telephony services are tentatively defined as meeting the following conditions: 1) the provider holds itself out as providing voice telephony or facsimile transmission service, 2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the PSTN; 3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements, and 4) it transmits customer information without net change in form or content. *Id.* at paragraph 88.

⁴⁴ *Id.* at paragraph 89.

⁴⁵ *Id.* at paragraph 83. See also paragraph 90.

distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be quickly overcome by changes in technology. We defer a more definitive resolution of these issues pending the development of a more fully-developed record because we recognize the need, when dealing with emerging services and technologies in environments as dynamic as today's Internet and telecommunications markets, to have as complete information and input as possible.⁴⁶

FCC referred to "upcoming proceedings" in which it "undoubtedly will be addressing the regulatory status of various specific forms of IP telephony," including universal service mechanisms, the assessment and payment of interstate access charges, and the filing of interstate tariffs. These difficult and contested issues relating to the assessment of interstate access charges remain unresolved. It may be difficult, for example, to determine whether particular phone-to-phone IP telephony calls are "interstate," and thus subject to the federal access charge scheme, or intrastate.⁴⁷

Any rulemaking concerning IP telephony, moreover, has implications for the international market. In the international market, IP telephony appears to serve the public interest by placing significant downward pressure on international settlement rates and consumer prices. IP telephony appears to provide an a calling option in foreign markets that otherwise would face little or no competition. Moreover, "any proposal to regulate Internet telephony as a 'telecommunications service' would raise contentious issues, resolution of which would have international, as well as domestic, repercussions."⁴⁸ Thus policymakers must consider carefully the international regulatory

⁴⁶ *Id.* at paragraph 90.

⁴⁷ *Id.* at paragraph 91.

⁴⁸ Letter dated April 9, 1998 from Larry Irving on behalf of NTIA to William E. Kennard, Chairman, FCC. http://www.ntia.doc.gov/ntiahome/fccfilings/96_45reportltr.htm.

requirements to which phone-to-phone providers would be subject as a result of domestic regulation of IP telephony.⁴⁹

IV. Conclusion

There is a true national interest in formulating a uniform Internet policy from coast to coast. Regulatory agencies must avoid making rules that will inhibit the development of new technologies, such as high bandwidth technologies, which will provide economic growth, consumer choice, and, ultimately, lower prices for telecommunications. There is at present no means of “marking” or otherwise distinguishing IP telephony from other Internet usage. Any determination of the type and jurisdictional nature of such traffic would implicate issues beyond whether access charges should be assessed instead of local charges. For the reasons stated, the Commission should forebear from any policy decision concerning “appropriate compensation for the use of IP telephony,” until the FCC has made a determination regarding the issue or until it is clear that the technology and use of IP telephony have developed to the point where sufficient information exists for a policy decision to be made by the Commission consistently with national Internet policy.

In the alternative, SECCA requests that any hearing be postponed until a Scheduling Order can be issued by the Commission. A proposed Scheduling Order is attached as an Addendum. Given the difficult and far-reaching implications of the issues involved in this docket, any Scheduling Order must provide for sufficient time for the Commission to reach informed policy decisions. As stated above, the technology and use of IP telephony must be clearly understood.

⁴⁹ Report to Congress, supra, at paragraph 93.

Hence, the Order would include an opportunity for interested parties to brief the initial issue whether and to what extent it is necessary for the Commission at this time to engage in further proceedings concerning appropriate charges to be assessed on the users of IP telephony. If the Commission then finds that further proceedings are necessary, the parties pursuant to the Scheduling Order would engage in a preliminary conference, supervised by Commission Staff, to discuss and determine relevant issues concerning IP telephony, and then would engage in workshops, also supervised by Staff, at which subject matter experts would participate, to discuss those issues and determine what issues may be resolved. Following the workshops, if further proceedings are deemed necessary, the parties would have an opportunity to submit testimony and post-hearing comments, in addition to participating in a hearing. The Commission would then issue a ruling.

Respectfully submitted,

ROBINSON, McFADDEN & MOORE, P.C.

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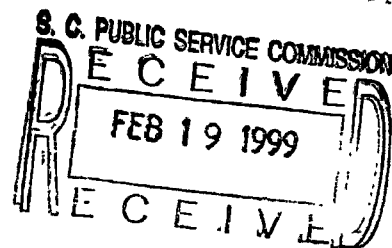
Addendum
Proposed Scheduling Order

Briefs Due On Initial Issue	March 23, 1999
Commission Decision On Initial Issue	April 27, 1999
Preliminary Conference	May 1999
Workshops	June 1999
Direct Testimony Due	July 1999
Reply Testimony Due	August 1999
Hearing and Argument	September 1999
Post-Comment Briefs	October 1999

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 98-651-C

IN RE:)
)
GENERIC PROCEEDING TO)
REVIEW VOICE OVER)
THE INTERNET)
_____)



CERTIFICATE OF SERVICE BY MAIL

This is to certify that I, Nancy P. Semenak, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the MOTION TO FOREBEAR FROM DECISION OR FOR SCHEDULING ORDER OF SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION, in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Caroline N. Watson, Esquire
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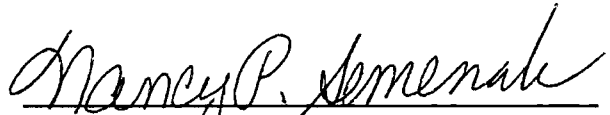
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Dated at Columbia, South Carolina this 19TH day of February, 1999.


Nancy P. Semenek